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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/516,388

08/04/2005

Martin Fisher

281/1

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CHARLOTTE, NC 28210

EXAMINER

WALCZAK, DAVID J

ART UNIT

PAPER NUMBER

3751

MAIL DATE

DELIVERY MODE

07/07/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,388	<b>Applicant(s)</b> FISHER, MARTIN	
	<b>Examiner</b> David J. Walczak	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-51,68-71,73 and 74 is/are pending in the application.
- 4a) Of the above claim(s) 27-32,40-44,51 and 68-71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26,33-39,45-50,73 and 74 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

Claims 1-26, 33-39, 45-50, 73 and 74 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, it is unclear as to whether or not the roller defined on line 9 is intended to further define the "paint distribution means" already defined on line 2, or a different element, i.e., the specification indicates that the roller is the paint distribution means, however, the claim language seems to indicate that the roller and the paint distribution means are two different elements.

Further in regard to claim 1, an antecedent basis for "the head" (line 8), "the distribution means surface" (line 12) and "the hood" (line 12) has not been defined.

In regard to claims 3, 5 and 6, these claims are indefinite in that the structure defined therein has already been defined in claim 1.

In regard to claim 4, it is unclear as to whether or not the hood disclosed therein is intended to further define the same hood already defined in claim 1, or a different hood.

In regard to claim 73, on line 5, the phrase "on one side" is indefinite in that it is unclear as to which element includes the "side" that is being referred.

Further in regard to claim 73, the phrase "between the roller surface and the outlet on another opposite side of the outlet" is indefinite in that it is unclear as to how

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the gap can be both between the roller surface and gap and on opposite sides of the gap. It appears that the Applicant had intended to define the gap between the roller surface and the hood, as opposed to the roller surface and the outlet (see page 12, the past paragraph); i.e., it appears that the hood should be incorporated into the claim and, after providing such an antecedent basis for "the hood", on line 5 of this claim "outlet" (both occurrences) should be --hood-- and on line 5, after "on one side", --of the outlet-- should be inserted.

It is further noted that non-elected claims 31, 32 and 51 are indefinite in that it is unclear as to whether or not the paint container is intended to be part of the claimed combination, i.e., the language of claim 30, indicates that the paint container is not intended to be claimed, however the language of claims 31, 32 and 51 seems to indicate that the paint container is intended to be claimed. Should the Applicant intend to claim the paint container, an antecedent basis for the paint container should be defined. Such a correction is needed before claims 31, 32 and 51 can be rejoined and allowed. The Applicant should review the other non-elected claims to ensure that the language therein is definite such that these claims can also be rejoined and allowed at the appropriate time.

### ***Allowable Subject Matter***

Claims 1-26, 33-39, 45-50, 73 and 74 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Non-elected claims 68-71 must be canceled before this application can be allowed.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huson Gregory can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
7/3/09

/David J. Walczak/  
Primary Examiner, Art Unit 3751